

**BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE**

---

**In the Matter of the Appeal of Rodolfo Gomez, Jr.  
Personnel Order 2013-108**

---

Hearing Dates: July 22-24, 2015

Hearing Locations: 809 North Broadway, Room 111  
Milwaukee, Wisconsin

Commissioners: Kathryn A. Hein  
Steven M. DeVougas  
Michael M. O'Hear

Chair of Board Panel: Michael M. O'Hear

Appearances: Christopher Riordan, von Briesen & Roper  
For the Milwaukee Police Department

Brendan P. Matthews  
Cermele & Matthews, S.C.  
For Appellant Rodolfo Gomez, Jr.

**PROCEDURAL HISTORY**

The Chief of Police, Edward A. Flynn, charged Detective Rodolfo Gomez, Jr. in Personnel Order 2013-108, dated December 3, 2013 with the following violation of Milwaukee Police Department Rules & Procedures:

1. Core Value 6.00-Restraint, referencing Guiding Principle 6.01: Failure to exercise restraint.

Detective Gomez, the Appellant in this matter, filed an appeal with the Milwaukee Fire & Police Commission from the order of the Chief of Police and a hearing was held.

### **SUMMARY OF HEARING PROCEEDINGS**

The hearing was conducted from July 22-24, 2015. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Chief of Police: Detective Keith Kopcha, Milwaukee Police Department  
Detective Raymond Gibbs, Milwaukee Police Department  
Lieutenant Paul Kavanaugh, Milwaukee Police Department  
Lieutenant Steven Caballero, Milwaukee Police Department  
Detective Jeremiah Jacks, Milwaukee Police Department  
Detective Patrick Pajot, Milwaukee Police Department  
Sergeant Thomas Wroblewski, Milwaukee Police Department  
Lieutenant James MacGillis, Milwaukee Police Department  
Lieutenant Johnny Sgrignuoli, Milwaukee Police Department  
Assistant Chief Kurt Leibold, Milwaukee Police Department

For the Appellant: Jeffrey Martin, DSI Consulting, LLC  
Detective Rodolfo Gomez, Jr., Milwaukee Police Department  
Robert C. Willis, Consultant  
Shawn Lauda, Milwaukee Police Association

Based upon the evidence received at the hearing, the Commission makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

On August 14, 2013, Deron Love was arrested as a suspect in the death of his seven-month-old child. Mr. Love was initially questioned at the hospital where his child was receiving medical treatment and later he was arrested. Subsequent to his arrest, Detectives Charles Mueller and Keith Kopcha questioned Mr. Love for approximately two hours about the death of his child. Mr. Love was cooperative; however, Mr. Love expressed a dislike of white people. During questioning, Mr. Love became upset when asked if he was responsible for the death of his child. The detectives stopped the interrogation and returned Mr. Love to his cell.

1. Detectives Mueller and Kopcha summarized their interrogation with Mr. Love to Lieutenants Justin Carloni and Paul Kavanaugh during a Homicide Division shift change. Detective Gomez was also present during this briefing and volunteered to conduct an additional interrogation of Mr. Love, in an attempt to obtain a confession. Lieutenant Kavanaugh suggested that Detective Jeremiah Jacks assist with the interrogation, given Mr. Love's statement regarding disliking white people. (Jacks, like Love, is African American.)

2. At around 11:00 p.m., Detective Gomez retrieved Mr. Love and handcuffed his left hand to the wall. Detective Gomez testified that he recalls only handcuffing a suspect two or three times in his career. Detective Kopcha also testified that Mr. Love was not handcuffed during his initial two hour investigation. The panel learned through testimony from other detectives in the Homicide Division that it is rare to handcuff suspects during interrogations and that suspects rarely raise their voice.
3. A video camera inside the interrogation room captured the entire interaction between Mr. Love and Detective Gomez. We have viewed the entire video, which is in two parts. Our findings are largely based on the video, although we have taken into account the testimony and documentary evidence submitted by both parties. We have also given due regard to the testimony of Detective Gomez' experts, Jeffrey Martin and Robert C. Willis, regarding the potential limitation of video evidence, but, even taking those limitations into account, we believe the video evidence in this case to be clear and compelling as to most of the matters of concern in this appeal.
4. Detective Gomez entered the interrogation room with Mr. Love sitting across from him at a small metal table to initiate the second interview. The interview room is approximately five feet by seven feet, with an emergency button near the door. Detective Gomez believed he closed the door behind him, but later testimony indicated that the interrogation room door was open at a 90-degree angle.
5. At 11:01 p.m., Detective Gomez stood from his seated position and continued to speak to Mr. Love. It should be noted that Mr. Love was already very upset and agitated from the beginning of the interrogation. Mr. Love became more agitated when Detective Gomez began to accuse him of causing his child's death. Mr. Love then jumped up and put his face in close proximity to Detective Gomez' face while yelling at him. Detective Gomez then pushed Mr. Love back towards the wall and delivered a right hand strike to Mr. Love's face, which caused Mr. Love to stumble backwards. The video also shows that after the initial strike, Detective Gomez placed his forearm across the neck and chest of Mr. Love, and was seen applying pressure. Detective Gomez continued to approach Mr. Love and yelled "Stay down!" and "Stop resisting!" while delivering numerous blows to Mr. Love's upper body and head. Mr. Love was bent at the waist attempting to shield himself from the blows. Detective Gomez then delivered a knee strike towards Mr. Love's upper chest when his left arm became tangled with Mr. Love's arm. While Mr. Love was cowering or attempting to cover himself up, he is yelling for Detective Gomez to stop hitting him.
6. At 11:02 p.m., Lt. Caballero entered the room and assisted Detective Gomez with placing Mr. Love into a seated position on the floor. At the time Lt. Caballero enters the room, Detective Gomez could be heard yelling, "You don't fuckin take a swing at me!" as Detective Gomez grabbed Mr. Love's hair to stabilize his head. Lt. Caballero and Detective Gomez exit the interrogation room. The video recording was stopped from 11:02 to 11:04 p.m.
7. At 11:04 p.m., the video recording was turned back on. Mr. Love was standing, visibly upset and yelling profanities to an unknown person in the doorway. A voice

instructed Mr. Love to sit down and when that directive was ignored, Mr. Love was instructed to “sit the fuck down.” Detectives Jacks, Patrick Pajot and Gomez enter the interrogation room. Detective Jacks attempted to unlock Mr. Love’s handcuffed arm from the wall and place handcuffs on his wrist, behind his back. Mr. Love was extremely agitated and yelling profanities at the detectives during this process. While Detectives Jacks and Pajot were attempting to apply the handcuffs to Mr. Love, Mr. Love turned his head toward Detective Gomez, who pushed Mr. Love’s head away from him and against the wall with his left hand and forearm. Detective Gomez then placed his left hand on Mr. Love’s face, while grasping Mr. Love’s upper head, causing his fingers to sweep into Mr. Love’s nose, forehead and right eye. Mr. Love can be heard yelling in distress, as Detective Gomez’ finger remained in Mr. Love’s eye for several seconds.

8. At 11:06 p.m., Detectives Pajot, Jacks and Gomez exited the interrogation room with Mr. Love’s hands handcuffed behind his back. Subsequently, Mr. Love complained that his tooth was knocked out during his interrogation and he was transported to Columbia St. Mary’s for treatment. Mr. Love’s hospital records indicate that Mr. Love was treated for a soft tissue contusion to his lower lip. Mr. Love did not have any swelling to his face and his teeth were not damaged.
9. Detective Gomez reported injuries to his hands from his interaction with Mr. Love. He was treated for abrasions and soft tissue contusions to both hands.
10. On October 13, 2013, Detective Gomez was charged with one felony count of Misconduct in Public Office, but was later acquitted. It should be noted that Mr. Love was also acquitted of all charges.
11. A PI-21 interview was attempted, but Detective Gomez stated that he could not participate in an interview for 30-60 days, based on the advice of his doctor.

### **CONCLUSIONS OF LAW**

12. This appeal is governed by the seven just cause standards set forth in Wis. Stat. § 62.50(17)(b). In a disciplinary appeal, our hearings are divided into two phases. In the first phase, we determine whether a Department rule has been violated. If we find a rule violation, then we conduct a “Phase II” hearing to determine what discipline to impose.
13. The Commission must find by a preponderance of the evidence that there is just cause to sustain the charges. Preponderance of the evidence means “more likely than not,” rather than just possible. See *U.S. v. Johnson*, 342 F.3d 731, 734 (7th Cir. 2003). The Department bears the burden of proof as to each of these standards. We conclude that standards one through five (Wis. Stat. §62.50 (17)(b)1-5) are satisfied by a preponderance of the evidence with respect to the two charges against Detective Gomez; and we further find that the preponderance of the evidence supports that the “good of the service” requires that Detective Gomez be permanently discharged. (Wis. Stat. §62.50 (17)(b)6-7).

## PHASE I

14. The first just cause standard asks “whether the subordinate could reasonably be expected to have knowledge of the probable consequences of the alleged conduct.” Detective Gomez acknowledges that he received Wisconsin Defensive and Arrest Tactics “DAAT” training and Professional Communications training at the police academy. In addition, Detective Gomez had fourteen years of experience on the job and had conducted over 500 interrogations. According to the DAAT Manual, an officer may use force: (1) to achieve and maintain control of resistive subjects; (2) to detain persons reasonably suspected of criminal behavior; (3) to make lawful arrests; (4) to defend themselves or others; and (5) to prevent escape. An officer is not allowed to punish someone for something he or she has said or done. An officer cannot use force to retaliate against someone who has offended or angered him. An officer cannot use force to show someone who’s boss or teach someone a lesson. The objective in the use of force is control.
15. Further, the use of force must be for a legitimate law enforcement purpose and be objectively reasonable. The Chief’s expert, Lt. MacGillis testified that an officer must continually assess his use of force and allow the subject to comply. Detective Gomez testified that he never considered disengaging during his interaction with Mr. Love. Detective Gomez also knew that under the current Code of Conduct, as well as its predecessor, Rule 4, that he could be subject to dismissal for a lack of restraint. (See, e.g., Ex. 67.)
16. We have previously stated that “excessive force is one of the most serious forms of misconduct of which an officer may be guilty. This is a betrayal of public trust of the first order, and we have no difficulty concluding that officers are reasonably aware of the probability of discipline up to and including discharge for striking a handcuffed subject.” (See *Schoen* FPC Decision, 12/12/2012, para. 16, p. 4). Therefore, the first just cause standard is satisfied.
17. The second just cause standard asks “whether the rule or order the subordinate allegedly violated is reasonable.” States, cities, and other municipalities can adopt policies that are more restrictive than those promulgated by the Supreme Court or their state’s supreme court. The rule at issue reads, “Police members shall exercise restraint in the use of force and act in proportion to the seriousness of the offense and legitimate law enforcement objectives to be achieved.” We do not see any possible objection to the reasonableness of this rule, which embodies one of the most important principles that must govern police conduct if the police are to maintain and deserve the public’s trust. We conclude that the Department has satisfied the second standard by a preponderance of the evidence.
18. The third just cause standard asks “whether the Chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.” In this case, the video largely speaks for itself, and it may be that little more by way of investigation is necessary than to view the video. Detective Gomez argued that Internal Affairs did not make any attempt to investigate

this matter, but rather “cut and paste” the criminal investigatory report. We disagree; the Department showed that an internal investigation was done, and that documents were collected and reviewed. Internal Affairs followed their procedures and protocol. Moreover, we see no reason why an investigator who is considering a rules violation must necessarily duplicate all of the interviews and other work performed for purposes of a criminal investigation, especially in a case in which the video evidence is so clear and compelling. While the precise legal standards and burden of proof may differ with respect to the two types of investigation, in some cases the relevant facts will overlap to a great extent. This is such a case. Nor did the investigation fall short of reasonable because the Department failed to conduct a PI-21 interview. Internal Affairs attempted to obtain a PI-21, but was delayed by Detective Gomez’ treating physician. Under the circumstances, including the availability of video evidence, we do not believe that the Department was required to wait until Detective Gomez received medical clearance to give a statement before the issuance of charges. Moreover, Detective Gomez was given an opportunity to present his side of the story after charges were issued, thereby providing him with pre-deprivation due process. We conclude that the Department has satisfied the third standard by a preponderance of the evidence.

19. The fourth just cause standard asks “whether the effort [in the third standard] was fair and objective.” For the reasons set forth in the previous paragraph, we conclude that the Department has satisfied the fourth standard by a preponderance of the evidence.
20. The fifth just cause standard asks “whether the Chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.” There is no question that Detective Gomez used force against Mr. Love. The specific acts of force demonstrated are multiple punches, pressing the forearm across the chest and neck, knee strikes and an eye gouge (intentionality disputed). There is no dispute that Detective Gomez committed the charged acts. The only question is whether these acts were consistent with the requirements of “restraint” and “proportionality” to the seriousness of the offense and the legitimate law enforcement objective to be achieved.”(See *Schoen* FPC Decision, 12/12/2012, para. 20, p. 5).
21. Detective Gomez was not pursuing any legitimate law enforcement purpose after his first strike to Mr. Love. Detective Gomez testified that he never considered disengaging, even though he attempted to de-escalate. Further, Detective Gomez testified that he “forgot” Mr. Love was handcuffed to the wall or that the door was open. He also did not notice that Mr. Love was yelling for him to stop hitting him and was covering up. Detective Gomez testified that he believed Mr. Love was a “baby killer” and that colored his approach and interaction with Mr. Love.
22. In addition, there was no reason for Detective Gomez to re-enter the room after the altercation. His fellow detectives all testified that had they known he had been involved in a physical altercation with Mr. Love, they would not have allowed Detective Gomez into the interrogation room the second time. All of these factors lead us to the conclusion that Detective Gomez lost his temper.

23. At the hearing, Detective Gomez presented evidence that broke down the events in the interrogation room, literally frame by frame, in order to establish that his actions were justified. However, it does not change the fact that Detective Gomez' actions were the result of a loss of temper, lack of restraint, and likely, arrogance. Detective Gomez knew that Mr. Love had a violent history, he had been unsuccessfully interviewed twice earlier, and that accusing him regarding the death of his child "would set Mr. Love off." Detective Gomez stood over Mr. Love and closed the distance between them in order to press Mr. Love into a confession. In Detective Gomez' eyes, Mr. Love was a "baby killer." We do not believe that Mr. Love posed a danger to Detective Gomez or that Detective Gomez genuinely felt in danger. Mr. Love was handcuffed to a wall. Further, Mr. Love had been previously interviewed for two hours with his hands free, with no incident. Detective Gomez was instructed to work with a partner, Det. Jacks, but felt he could handle it on his own. In watching the altercation, Detective Gomez possessed the advantage at all times.
24. Detective Gomez presented testimony that Mr. Love demonstrated what is called "resistive tension." Basically, while on the video, it appeared that Mr. Love was surrendering, but Detective Gomez may have felt something different. Regardless, Detective Gomez had other options that he did not consider. At the hearing, the Chief's expert testified convincingly that there were a variety of things that Detective Gomez could have done differently. He had several opportunities to disengage or to use verbalization to quell the situation, while Mr. Love was attempting to capitulate. Further, there was no exigent circumstance that required Detective Gomez to enter the interrogation room a second time, especially with a prisoner who was extremely upset and challenging Detective Gomez to a fight, as well as threatening Detective Gomez and his family. Detective Gomez could have waited for back up, and briefed Detectives Jacks and/or Pajot on the situation and allowed them to calm Mr. Love down and return him to the jail. By failing to inform his fellow officers of what had occurred between Mr. Love and himself, as well as re-entering the room, Detective Gomez could have placed his fellow officers in danger and he did not exercise the best judgment in diffusing the situation. For these reasons, we conclude that the fifth just cause standard is satisfied.

## PHASE II

25. Having found a rule violation and that the first five just cause standards are satisfied by a preponderance of the evidence, we turn to Phase II and the question of discipline. As stated in Wis. Stat. §62.50(17)(a), and echoed in Section 14 of our Trial Procedures, "If the board or panel determines that the charges are sustained, the board shall at once determine whether the good of the service requires that the accused be permanently discharged or be suspended without pay for a period not exceeding 60 days or reduced in rank." In making this "good of the service" decision, we take into account the sixth and seventh just cause standards.
26. The sixth just cause standard asks "whether the Chief is applying the rule or order fairly and without discrimination against the subordinate." As discussed above, we find no animus against Detective Gomez. The testimony of Lt. Sgrignuoli, Assistant

Chief Leibold and the notes on Exhibit 33 establish the considerations - both aggravating and mitigating - that were presented for the Chief's consideration at the Discipline Review; and there seems nothing unfair or improper about any of the considerations.

27. In evaluating the sixth just cause standard, we often look to "comparables," that is, the discipline imposed in earlier cases that are similar to the case under review. The City's comparables and Detective Gomez' comparables differ. (Exs. 61 and 68.) However, we find that the closest comparable involved former officer Richard A. Schoen. And in that case, the termination of the officer was upheld by this Commission and the Circuit Court. Taking into account all of the foregoing considerations and examining the comparables presented, we conclude that the sixth just cause standard is satisfied by a preponderance of the evidence.
28. The seventh and final just cause standard asks "whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the department." When we balance the serious violation versus good record of service, we do so with an eye to the ultimate question: "whether," in the words of Wis. Stat. § 62.50(17)(a), "the good of the service requires that the accused be permanently discharged." We also may look at the member's character, work record, and the impact of the misconduct on the complainant, department and community.
29. While the Department did not present Detective Gomez' "hard card", the evidence established that Detective Gomez had several earlier rule violations, albeit no prior substantiated charges of excessive force. We note that Detective Gomez was highly regarded as an effective interrogator and detective, with extensive experience. He had good performance evaluations. It was apparent that Detective Gomez enjoyed his job.
30. However, the violation in this case was very serious. As a general matter, there may be no more serious form of officer misconduct than excessive force. Even when no serious physical injury is sustained as a result of an officer assault, a victim may nonetheless suffer severe emotional trauma. Moreover, we agree with Assistant Chief Leibold, who testified that excessive force has a negative impact on the reputation of the entire Department. So even though Detective Gomez argued that Mr. Love did not sustain serious physical injuries, the impact of Detective Gomez' actions cast a far greater shadow than he acknowledged. In our view, the seriousness of the violation outweighs any positive aspects of Detective Gomez' record of service.
31. We conclude that the good of the service requires that Detective Gomez be permanently discharged. We do note that even though the Chief is permitted to send a designee to testify at the hearing based upon scheduling conflicts, it is the Commission's preference to hear directly from the Chief. While this is not a rule but merely a preference, we find in this case that Assistant Chief Leibold was specifically included in the Discipline Review of Detective Gomez regarding this matter, as were



the Chief's Command Staff and members of Internal Affairs. We do not believe it was inappropriate under the circumstances for Assistant Chief Leibold to testify regarding the considerations that led to the disciplinary decision at issue.

32. In sum, we conclude that the seven just cause standards are satisfied by a preponderance of the evidence. We further conclude that the good of the service requires that Detective Gomez be discharged for the charge we have sustained.

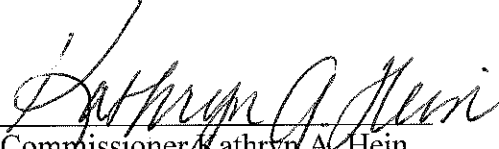
#### MOTION TO DISMISS

33. Detective Gomez filed a pretrial motion to dismiss on several grounds. As announced at the hearing, we deny the motion. The motion was untimely as it was filed after the deadline for pretrial motions set in the scheduling order. Detective Gomez's attorney indicates that he withheld the motion because he did not know with whom it should be filed, but he never requested an extension of time, and, in any event, it should have been clear that the motion could be filed with Commission staff, which is precisely where it was filed eventually. We note there are also other grounds for denying the motion. Detective Gomez objects to a member of the Commission serving as hearing examiner; however, this is explicitly contemplated by our rules. See FPC Rule 1, §1(c). Detective Gomez objects to the fact that he was not paid pending his appeal. However, the pay issue goes beyond the jurisdiction of this appeals panel and, in any event, does not constitute a ground for dismissal. Detective Gomez objects to alleged adjournments in this appeal in contravention of Commission rules; however, he has not specifically identified for us the adjournment or adjournments to which he objects. Moreover, based on our review of the documents submitted on behalf of the Department in its response to the motion, we see no indication of improper or prejudicial adjournments. Finally, Detective Gomez objects to the timing of the trial in this matter. However, he has not supplied us with any documents or other evidence that would allow us to see what scheduling orders have been entered when, and at whose behest and for what reasons there have been modifications to the scheduling orders. Nor has he given us any reason to think he has ever offered timely objections to the schedule. The only information we have been supplied about the scheduling of this matter comes from the documents in the Department's response, and, as we have stated, we find nothing improper in what is depicted through those documents. As a final matter, we note that Detective Gomez has not shown how he was prejudiced by any of this; nor has he supplied us with any argument or authority indicating that dismissal of charges would be an appropriate remedy for whatever prejudice he has suffered.

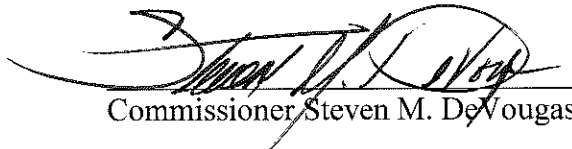
**DECISION**

The Appellant, Rodolfo Gomez, Jr. is ordered discharged from the Department.

This written decision is rendered 10-business days from the oral disposition on July 24, 2015.

  
Commissioner Kathryn A. Hein

8/7/15  
Date

  
Commissioner Steven M. DeVougas

8-7-15  
Date

  
Commissioner Michael M. O'Hear

8/7/15  
Date